

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Energy Division****San Francisco, California****Date : October 5, 2006****Resolution No. E-4017****R E S O L U T I O N**

RESOLUTION E-4017. Approval of a citation program authorizing Commission Staff to enforce compliance with system and local resource adequacy filing requirements by load-serving entities within the service territories of California's three largest investor-owned electric utilities.

SUMMARY

This Resolution approves a citation program under the administration of the Director of the Energy Division for enforcing compliance with certain system and local resource adequacy filing requirements that apply to all load-serving entities ("LSEs")¹ in the service territories of California's three largest investor-owned utilities. Specifically, the citation program will enforce compliance with the requirements for submission of load data and forecasts, other resource adequacy compliance filings, and responses to requests for information by Energy Division or the California Energy Commission ("CEC") reasonably related to the implementation of resource adequacy requirements. Staff will be delegated authority to draft and issue citations for specific violations and levy penalties in specified amounts as set forth in Appendix A. The penalties may be levied for: (1) failure to submit the load data, forecasts and other compliance filings in the time or manner required; and (2) failure to otherwise provide information reasonably related to the implementation of resource adequacy requirements requested by Energy Division or the CEC in the time and manner required.

Delegation of authority to Energy Division will allow prompt action by Staff to protect the public and fulfill the objectives of the Commission's resource adequacy program and Public Utilities Code section 380 (Section 3 of Stats. 2005,

¹ LSEs include investor owned utilities, electric service providers and community choice aggregators.

Ch. 367 (A.B. 380)).² This Resolution is based on the authority vested in the Commission by: the California Constitution; California statutes and court decisions; and prior Commission decisions and orders. Nothing in this Resolution diminishes, alters, or reduces the Commission's existing authority to promote and enforce public safety and the reliability of California's electricity supply.

BACKGROUND

Beginning in 2004, the Commission issued a series of decisions on resource adequacy to ensure adequate, cost-effective investment in electric generation capacity for California and that such capacity is available to the California Independent System Operator (“CAISO”) to reliably serve California’s growing demand for electricity.³

The resource adequacy requirements are comprehensive, and require demonstrations of both: (1) aggregate or system resource adequacy (acquisition of sufficient generation capacity to serve forecasted retail customer load plus a reserve margin without accounting for local transmission constraints); and (2) local resource adequacy (acquisition of sufficient generation capacity within defined, transmission-constrained areas).⁴ There currently are a number of required compliance filings:

- “Historic Load Data”: actual load data from the prior year submitted to the CEC.
- “Preliminary Load Forecast”: an annual, year-ahead hourly load forecast for all twelve months of the following year submitted to Energy Division.
- “Preliminary Local RAR Compliance Filing”: an advice letter filing with Energy Division using an approved template that demonstrates the LSE’s capacity contracts for 2007 with units included on the *2007 Local Area Resource Data List* maintained by the CAISO for proposed 2007 RMR contracts.
- “Year-Ahead System Resource Adequacy Compliance Filing”: an annual advice letter filing with Energy Division using an approved template that

² Unless otherwise noted, all statutory references are to the Public Utilities Code.

³ *Policy and Program Coordination in Electric Utility Resource Planning (First Interim Opinion)* [D.04-01-050] (2004) ___ Cal.P.U.C.3d ___; *Policy and Program Coordination in Electric Utility Resource Planning (Resource Adequacy Opinion)* [D.04-10-035] (2004) ___ Cal.P.U.C.3d ___; *Opinion on Resource Adequacy Requirements* [D.05-10-042] (2005); *Opinion on Local Resource Adequacy Requirements* [D.06-06-064] (2006).

⁴ D.05-10-042, at pp. 82-92; D.06-06-064.

demonstrates qualifying capacity contracts in sufficient megawatt quantities to satisfy the 90% forward commitment obligation for loads plus reserve requirements for each of the five summer months, May – September, of the following year.

- “Year-Ahead Local Resource Adequacy Compliance Filing”: an annual advice letter filing with Energy Division using an approved template that demonstrates qualifying capacity contracts in sufficient megawatt quantities to satisfy 100% of the local procurement obligation for each month of the next calendar year (January through December).
- “Month-Ahead System Resource Adequacy Compliance Filings”: (1) a monthly advice letter filing with Energy Division using an approved template which demonstrates: (a) acquisition of 100% of the qualifying system capacity obligation (adjusted forecast plus reserve margin) for a “compliance month” from the qualifying capacity providers maintained by the CAISO and the amount of capacity from each provider; and (b) the sale of any qualifying capacity previously identified in a resource adequacy compliance filing for system resource adequacy requirements, and that the capacity remains fully available to the CAISO; and (2) a monthly load forecast submitted to the CEC demonstrating adjustments to the Preliminary Load Forecast for positive and negative load growth due to load migration.

Energy Division is authorized to revise the required content of the compliance filing templates and guides as necessary for orderly implementation of the resource adequacy program.⁵

In January 2006, the Legislature enacted section 380, which directs the Commission to exercise its enforcement powers to ensure compliance with resource adequacy requirements, to enforce resource adequacy requirements in a non-discriminatory manner, and to minimize enforcement requirements and costs.⁶ Section 380(f) requires the Commission to obtain sufficient information to enable the Commission to determine compliance with the resource adequacy requirements established by the Commission. Section 380 also empowers the Commission to determine and authorize the “most efficient and equitable means” to achieve the objectives of the statute.⁷

⁵ D.06-06-064, mimeo at p. 88, Conclusion of Law 30(c).

⁶ Sections 380(b) (3) & (e).

⁷ Section 380(h).

DISCUSSION

Under section 380, the Commission has a statutory mandate and broad powers to enforce compliance with resource adequacy requirements. In addition, pursuant to section 2101, the Commission has the power to act as an enforcement agency and to ensure that penalties are promptly prosecuted and collected. Public utilities are subject to enforcement action and penalties pursuant to sections 2102-2105, 2107, 2108 and 2114. Electric service providers are subject to enforcement action pursuant to these same code sections as if they were public utilities.⁸ Community choice aggregators are subject to enforcement action pursuant to section 2111.

California law, including section 7 of the Public Utilities Code, allows delegation of powers by the Commission.⁹ The Commission may delegate to its Staff the performance of certain functions, including investigation of facts preliminary to agency action, and the assessment of specific penalties for certain types of violations.¹⁰

A citation program administered by Staff for specified violations of the Commission's resource adequacy requirements will allow prompt action by Staff to protect consumers, minimize enforcement costs, and fulfill the objectives of the Commission's resource adequacy program and section 380. This citation program is consistent with other approved citation programs. For example, the types of violations that Staff may enforce by citation and the citation procedures are substantially similar to those approved in General Order No. 167 for the citation program administered by Staff for the operation and maintenance standards for electric generation facilities.¹¹ The amounts of the proposed penalties also are similar to those approved in General Order No. 167. The penalty for failure to file the Year-Ahead Local Resource Adequacy filing, which was specifically determined in D.06-06-064, will not be the subject of this citation program, but will be enforced through formal Commission proceedings.¹²

The issuance of a citation for a specified violation is not mandatory. In enforcing compliance with Resource Adequacy filing requirements, or in response to any Specified Violation, the Commission may initiate any authorized formal proceeding or pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. Finally, the Commission's enforcement of this

⁸ Section 394.25.

⁹ D.06-01-047, mimeo at pp. 9-12.

¹⁰ *Id.*

¹¹ See also Resolution ALJ-187, September 22, 2005.

¹² D.06-06-064, mimeo at pp. 69-70 and p. 87, Conclusion of Law 26.

Resolution by informal proceedings, formal proceedings, or otherwise, does not bar or affect the remedies otherwise available to other persons or government agencies.

PROPOSED CITATION PROGRAM

1.0 Specified Violations and Scheduled Penalties

1.1 “Specified Violation” means the failure, absent an approved extension, to submit: (a) any load data, load forecast or other resource adequacy compliance filing in the time and manner required; and (b) other information requested by Energy Division or the CEC that is reasonably related to the implementation of resource adequacy requirements. Appendix A sets forth the Specified Violations.

1.2 “Scheduled Penalties” for Specified Violations are set forth in Appendix A.

1.3 Modification of Appendix A. The Commission may modify Appendix A no earlier than thirty (30) days after providing reasonable notice and affording interested persons with an opportunity to comment.

2.0 Procedures for Citation Program

2.1 Citations for Specified Violations. After appropriate informal investigation and verification that a Specified Violation defined in this Resolution has occurred, the Director of the Energy Division or his/her designee is authorized to issue a citation. The Specified Violations and the corresponding Scheduled Penalty that may be levied are described in Appendix A to this Resolution.

2.2 Service of Citations. Citations shall be sent by the Director of Energy Division or his/her designee by first class mail to the Respondent, the LSE to which a citation has been issued pursuant to this Resolution, at the address of the agent for service of process.

2.3 Content of Citations. Citations shall state the alleged violation, the evidence supporting the alleged violation, and the proposed Scheduled Penalty. The citation may summarize the evidence and Energy Division shall make the evidence available for timely inspection upon request by the Respondent. Citations also shall include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative present at the hearing, and to request a transcript.

2.4 Response to Citation. A Respondent may either: (1) accept the citation and the Scheduled Penalty; or (2) appeal the citation.

2.5 Filing with Energy Division. Unless otherwise specified, “notify Energy Division,” “filing,” or “file” means to send a written communication by the U.S. Mail or an express mail service to Energy Division, 4th Floor, Attn: RAR Filing, 505 Van Ness Avenue, San Francisco, CA 94102. These written communications are not filed with the Commission’s Docket Office. In addition to or instead of communications by mail service, Energy Division may allow electronic submissions.

2.6 Acceptance of Scheduled Penalty. In the event the proposed Scheduled Penalty is accepted, the Respondent shall notify Energy Division in writing within thirty (30) days of the date of the citation, and shall pay the penalty in full as set forth in subsection 2.8, below.

2.7 Appeal of Citation. In lieu of accepting the Scheduled Penalty, a Respondent may appeal the citation and request a hearing. In the event of an appeal, any remedy available may be imposed, and the remedy shall not be mandated by or limited to the Scheduled Penalty.

2.7.1. Notice of Appeal. To appeal a citation, the Respondent must file a written Notice of Appeal. The Notice of Appeal must state the grounds for appeal and be filed with Energy Division within thirty (30) days of the date of the citation.

2.7.2. Referral to Administrative Law Judge. Upon receipt of a timely Notice of Appeal, Energy Division shall promptly provide a copy of the Notice of Appeal to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall promptly designate an Administrative Law Judge to hear the appeal.

2.7.3 Time of Hearing. No less than ten (10) days after the Notice of Appeal is filed, the assigned Administrative Law Judge shall set the matter for hearing promptly. The Administrative Law Judge, may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.

2.7.4 Location of Hearing. Appeals of citations shall be heard in the Commission’s San Francisco courtroom on regularly scheduled days.

2.7.5 Transcripts. The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's specified procedures.

2.7.6 Representation at Hearing. The Respondent may be represented at the hearing by an attorney or other representative, but any such representation shall be at the Respondent's expense.

2.7.7. Evidentiary Hearing. At an evidentiary hearing, Energy Division bears the burden of proof and, accordingly, shall open and close. The Administrative Law Judge may, in his or her discretion to better ascertain the truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received at the discretion of the Administrative Law Judge.

2.7.8 Submission. Ordinarily, the matter shall be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.

2.7.9 Decision. The Administrative Law Judge shall issue a draft resolution resolving the appeal not later than thirty (30) days after the appeal is submitted in accordance with subsection 2.7.8, and the draft resolution shall be placed on the first available agenda, consistent with the Commission's applicable rules.

2.7.10 Communications. From the date that a citation is issued to and including the date when the final decision is issued, neither the Respondent nor Energy Division, or any agent or other person on behalf of the Respondent or Energy Division, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or Administrative Law Judge, except as expressly permitted under these procedures.

2.8 Payment of Scheduled Penalties. Payment of Scheduled Penalties shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the State Treasury for the credit of the State General Fund.

2.9 Default. If the Respondent: (a) notifies Energy Division of acceptance of a Scheduled Penalty and fails to pay the full amount of the Scheduled Penalty within thirty (30) days of the date of the written acceptance of the Scheduled Penalty; or (b) fails to notify Energy Division of acceptance of a

Scheduled Penalty or fails to file a written Notice of Appeal in the manner and time required, then the citation and penalty shall become final and the Respondent is in default. Upon default, any unpaid balance of a Scheduled Penalty shall accrue interest at the legal rate of interest for judgments, and Energy Division and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

2.10 Reporting. Energy Division shall regularly report to the Commission after taking action pursuant to this Resolution. The report shall include a summary of the citations and penalties imposed, penalties paid, and the disposition of any appeals.

COMMENTS

The Draft Resolution was mailed to the parties in interest on August 21, 2006, in accordance with Public Utilities Code section 311(g) (1) and Rule 77.7 of the Rules of Practice and Procedure.

The Commission received and reviewed comments submitted by Southern California Edison ("SCE") and the Alliance for Energy Markets ("AReM") on September 5, 2006. Reply comments were received from Pacific Gas and Electric Company ("PG&E"), Sempra Energy ("SDG&E"), and AReM on September 11, 2006. While we do not attempt to summarize and respond to all comments here, we have carefully considered the comments of all parties, and respond to a few particular concerns here for clarification.

SCE suggests that the Commission modify Resolution E-4017 to explicitly authorize a cure period of ten days before a citation can be issued for a Specified Violation. Similarly, AReM requests that the Resolution provide for a three day grace period for all covered filings and submissions. SCE argues that the concept of a grace or cure period is consistent with our previous decisions in the Local Resource Adequacy proceeding (R.05-12-013), including D.06-06-064.

A related comment is SCE's position that in D.06-06-064, the scheduled penalty for failure to submit a Year-Ahead Local Resource Adequacy Compliance Filing was meant to be based on the amount the LSE is deficient, not the LSE's entire Local RA obligation. SCE further argues that calculating penalties using the \$40/kW-year amount based on the LSE's entire Local RA obligation could result in the assessment of a penalty in excess of the statutory limit in Public Utilities Code 2107 and 2111.

We disagree with SCE's interpretation of D.06-06-064, and decline to adopt SCE and AReM's suggestions, for the following reasons. D.06-06-064 allows, but does not mandate a grace period of *up to* ten calendar days for failure to make its monthly Local RAR filing. However, if we were to include a grace period for all LSE compliance filings in the Resolution itself, this would encourage filings beyond the deadline but within the grace period, thereby effectively moving back the deadline. As we observed in D.06-06-064, "time is of the essence with respect to LSE compliance filings."

We further explained that the failure to make timely monthly Local RAR compliance filings could result in the CAISO procuring backstop resources for the LSE's entire Local RAR obligation, as there would be no filing to confirm whether the LSE was only partially deficient, or had not procured any of its load at all. Within this context, we concluded that "the penalty for failure to make a timely compliance filing should, after a grace period not to exceed 10 calendar days, be equal the penalty for a deficiency." (D.06-06-064 at pp. 68-69.)

We believe that SCE's concerns regarding the amount of the potential penalties for failure to file the Year-Ahead Local Resource Adequacy Compliance filing have been adequately addressed in D.06-06-064, where we noted that our enforcement efforts will be consistent with the penalty regime established in D.05-10-042, which fully comports with statutorily authorized penalties. (See D.06-06-064, p. 67, fn. 19.) We are persuaded, however, that this penalty should not be the subject of a staff citation program, but rather, is more appropriate for enforcement through the Commission's formal enforcement proceedings, such as an Order to Show Cause or Order Instituting Investigation. Therefore, we have removed the penalty for Failure to submit a Year-Ahead Local Resource Adequacy Compliance filing from the Specified Violations listed in Appendix A of this Resolution.

AReM raises concerns over the confidentiality of the citation program, arguing that the identity of the LSE and contents of any citation be confidential until a final resolution of the matter is reached. The Commission has an ongoing proceeding for determining confidentiality of electric procurement data in R.05-06-040, and we think confidentiality issues are best addressed using the guidelines established in D.06-06-066, and other authority.

AReM points out that there is an incorrect statutory reference to Public Utilities Code section 2017, which should be Public Utilities Code 2107. This has been corrected in the Resolution.

FINDINGS OF FACT:

1. D.04-10-035, D.05-10-42 and D.06-06-064 require the submission of load data, load forecasts and other compliance filings by LSEs within the service territories of California's three largest investor-owned electric utilities: Historic Load Data; Preliminary Load Forecasts; Preliminary Local RAR Filings; Year-Ahead System Resource Adequacy Compliance Filings; Year-Ahead Local Resource Adequacy Compliance Filings; and Month-Ahead System Resource Adequacy Compliance Filings.
2. Delegation of authority to Energy Division to issue citations and levy Scheduled Penalties for Specified Violations will allow prompt action by Staff.
3. Prompt action by Staff is necessary to protect consumers and fulfill the objectives of the Commission's resource adequacy program and Public Utilities Code section 380.

CONCLUSIONS OF LAW:

1. Public Utilities Code section 380 authorizes and directs the Commission: (1) to exercise its enforcement powers to ensure compliance with resource adequacy requirements; (2), to enforce resource adequacy requirements in a non-discriminatory manner; (3) to minimize enforcement requirements and costs; (4) to obtain sufficient information to enable the Commission to determine compliance with the resource adequacy requirements established by the Commission; and (5) to authorize the "most efficient and equitable means" to achieve the objectives of the statute.
2. The Commission has the power to act as an enforcement agency and to ensure that penalties are promptly prosecuted and collected pursuant to Public Utilities Code section 2101.
3. Public utilities are subject to Commission enforcement action and penalties pursuant to Public Utilities Code sections 2102-2105, 2107, 2108 and 2114.
4. Pursuant to Public Utilities Code section 394.24, electric service providers are subject to Commission enforcement action pursuant to Public Utilities Code sections 2102-2105, 2107, 2108 and 2114 as if they were public utilities.

5. Community choice aggregators are subject to enforcement action pursuant to Public Utilities Code section 2111.
6. Under California law, including Public Utilities Code section 7, the Commission may delegate authority to its Staff to perform certain functions.
7. The Scheduled Penalties set forth in Appendix A are reasonable, will achieve the objectives of the Commission's resource adequacy program and Public Utilities Code section 380, and will effectively deter future violations.
8. D.06-06-064 determined the penalty for failure to file the Year-Ahead Local Resource Adequacy Compliance Filing is \$40 kw-year times the LSE's Local RAR procurement obligation; this penalty is not the subject of this citation program, but will be enforced through formal Commission proceedings.
9. The proposed procedures for the citation program fulfill the objectives of Public Utilities Code section 380, and ensure due process, fairness and efficiency in the application of the citation program.

THEREFORE, IT IS ORDERED THAT:

1. The citation program described above and the Scheduled Penalties for the Specified Violations, Appendix A, are hereby adopted.
2. Authority is delegated to Energy Division to issue citations and levy Scheduled Penalties for the Specified Violations set forth in Appendix A to enforce compliance by LSEs within the service territories of California's three largest investor-owned electric utilities with resource adequacy requirements.
3. The issuance of a citation for a Specified Violation is not mandatory. In enforcing compliance with Resource Adequacy filing requirements or in response to any specified violation, the Commission may initiate any formal proceeding authorized by the California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission's Rules of Practice and Procedure, or prior Commission orders, decisions, rules, directions, demands or requirements, and pursue any other remedy authorized by the California

Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity.

4. Nothing in this Resolution bars or affects the rights or remedies otherwise available to other persons or government agencies.
5. Resolution E-4017 is enacted.
6. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 5, 2006. The following Commissioners approved it:

STEPHEN LARSON
Executive Director

**APPENDIX A:
SPECIFIED VIOLATIONS AND SCHEDULED PENALTIES**

Specified Violation	Scheduled Penalty
Failure to file Historic Load Data at the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a Preliminary Load Forecast at the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a Month-Ahead System Resource Adequacy Compliance Filing at the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file a Preliminary Local RAR Compliance Filing, or a Year-Ahead System Resource Adequacy Compliance Filing at the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to comply with a request for information from Energy Division or the CEC that is reasonably related to implementation of the resource adequacy requirements in the time or in the manner required.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.

(END OF APPENDIX A)